

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2002-012661

11/24/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

UVONTE REED

SONYA E UNDERWOOD

v.

PAUL DARREN MCQUEEN

PETER A BOYLE

REMAND DESK CV-CCC  
SCOTTSDALE JUSTICE COURT

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

In the case at hand, Appellant's vehicle struck Appellee's vehicle. Appellant claims that another (unidentified) driver swerved into his path and Appellant had no other choice than to swerve into Appellee's path. At trial, Appellee offered documents containing Appellee's chiropractor's diagnosis of Appellee's injuries, and Appellee's bill for chiropractic services. Appellee offered these exhibits as written expert testimony regarding the reasonableness and necessity of Appellee's medical treatments. Consequently, the trial court found for Appellee, awarding him \$5,982.20 in damages, including \$2,552.00 in medical expenses for the chiropractor's treatments.

First, Appellee contends the Notice of Appeal was not timely filed. This Court rejected that contention when it was first presented in Appellee's Motion to Dismiss. There is no reason for the court to change its decision denying that motion.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2002-012661

11/24/2002

The second issue to be addressed is whether the trial court erred in admitting in to evidence the medical records and bills of Appellee's chiropractor without a witness to lay foundation for admission of the exhibits. Rule 705 of the Arizona Rules of Evidence states:

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination. [Emphasis added]

Unlike a lay witness, an expert witness is allowed to testify on facts or data not admissible in evidence, and may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data.<sup>1</sup> Appellant now contends the medical records are inadmissible hearsay; however, Appellant has waived this issue by his failure to object on those grounds.

The second issue is whether the trial court erred in admitting in to evidence the undisclosed declaration of authenticity affidavit of custodian of records. Here, the trial court did not err by allowing the declaration of authenticity affidavit. It is well settled that the "requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."<sup>2</sup> Moreover, Appellee correctly argues that extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(8) Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.<sup>3</sup>

The chiropractor's authenticity affidavit accompanied the documents and established the necessary foundation for admission into evidence.

As his final issue, Appellant states that the trial court erred in finding for Appellee when the trial court allegedly admitted that the Appellee had failed to persuade the trier of fact that Appellee's version of the facts was correct. I find nothing on the record to support such a claim. The contrary, I find, on page 112 of the transcript, the judge's opinion that Appellant was at fault and responsible for Appellee's damages:

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<sup>1</sup> *Continental Bank v. Wa-Ho Truck Brokerage*, 122 Ariz. 414, 595 P.2d 206 (App. 1979).

<sup>2</sup> Ariz. Rules of Evid. Rule 901(a).

<sup>3</sup> Ariz. Rules of Evid. Rule 902(8).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2002-012661

11/24/2002

It is unclear to me from the record from all the testimony as to whether or not Mr. McQueen [Appellant] was traveling westbound on McDowell. I'm not clear. But I am clear that there was an accident, that [Appellant] did come over into Appellee's lane and did hit [Appellee] and caused damage to the vehicle.

After a careful examination of the record, I find no legal errors on the part of the trial court.

IT IS THEREFORE ORDERED affirming the decision of the Scottsdale Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale Justice Court for all further, if any, and future proceedings.